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May 10, 2004 T.R.A. DOCKET ROOM

Honorable Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

In Re: Rulemaking Chapter 1220-4-1-.08(B), Name Changes for Public Utilities
Docket No. 04-00072

Dear Chairman Tate:

Enclosed please find the original plus fourteen (14) copies of the MCI metro Access Transmission Services, Inc.'s Comments in the above-referenced rulemaking docket.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

James L. Murphy III

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

MAY 10, 2004

*IN RE RULEMAKING CHAPTER 1220-4-)
1- 08 (B), NAME CHANGES FOR PUBLIC) Docket No 04-00072
UTILITIES)
)*

COMMENTS OF MCI REGARDING PROPOSED RULE

At the invitation of the Tennessee Regulatory Authority ("Authority"), as stated at the April 26, 2004 hearing in this docket, MCI metro Access Transmission Services, LLC ("MCI") respectfully submit these Comments. The Authority proposes a new Rule 1220-4-1-.08,¹ which would require the Authority's approval of name changes by public

¹ (1) Any public utility certificated to provide services in the state of Tennessee pursuant to Tenn Code Ann § 65-4-201 shall petition for approval of the Authority before doing either of the following

- (a) Changing the registered business name of the certificated public utility, or
- (b) Adopting an assumed business name under which the public utility will provide services to its Tennessee customers

(2) A petition for approval of either action referenced in subsection (1) above shall include the following

- (a) For public utilities operating as either a corporation, limited liability company, or limited partnership, verification that the certification public utility has registered the changed or assumed business name with the Office of the Tennessee Secretary of State in compliance with the requirements of Tenn Code Ann §§ 48-14-103, 48- 54-103, 48-207-103, or 61-2-103,
- (b) For public utilities providing telecommunications services in the state of Tennessee, verification that the changed or assumed corporate name has been recorded in the public utility's surety bond or letter of credit obtained pursuant to the Tenn Code Ann § 65-4-125, and
- (c) If the certificated public utility is currently serving end user customers in the state of Tennessee, a proposed notice for the Authority's approval to be sent to the utility's Tennessee customers for the purpose of informing these customers of the anticipated change in business name or adoption of an assumed business name, consistent with the requirements of TRA Rule 1220-4-02- 56(2)

utilities. At present, it appears that utilities certificated by the Authority routinely seek approval from it of name changes, although, as discussed below, no Authority rule appears to specifically compel the utilities to do so in all circumstances. MCI acknowledges a legitimate regulatory need for utilities to appropriately notify the Authority and their customers of name changes, and for filing new tariffs to indicate changed names. The proposed rule, however, would lead to conflicts with the approval process of the Secretary of State, interfere with the Secretary of State's authority, and is unnecessary given the powers presently exercisable by the Authority.

The proposed rule, read as a whole, envisions that a utility would a) obtain approval from the Secretary of State for a name change, then b) change the surety bond or letter of credit to indicate the new name, and, finally, c) petition the Authority for approval of the name change and the proposed customer notification letter. If that is the intended procedure, it will necessarily lead to situations in which the Secretary of State has approved the name change, only to have the Authority disapprove the change. Such would be costly and result in delay and administrative and regulatory confusion.

The proposed rule thus interferes with the process established under law for approval of name changes by the Secretary of State, even if the rule is intended (whether or not it is drafted currently) to provide for approval *first* by the Authority. The statutes cited as conferring jurisdiction upon the Authority for the proposed rule include Tenn. Code Ann. §§48-14-103 (registration of name or assumed name by foreign business corporations), 48-54-103 (registration of name by non-profit corporations), and 48-207-

(3) At its own discretion, the Authority may waive any of the requirements of subsection (2) of this rule for good cause

103 (registration of name by limited liability companies). Each of those statutes confers jurisdiction upon the Secretary of State, not the Authority, to register business names. Further, Tenn. Code Ann. §§48-14-101, 48-54-101 and 48-207-101 confer authority on the Secretary of State to disapprove confusing or deceptive names. Under the authority of these statutes the Secretary of State may reject and has rejected names proposed for use by a corporation if the name is similar to the trade-name of a person or concern previously engaged in a similar business, and where the adoption or use of the name would have the effect of deceiving or misleading the public. See *Neuhoff, Inc v Neuhoff Packing Co.*, 167 F 2d 459 (6th Cir. 1948). At the same time, competing companies themselves have not failed to litigate concerning the use of trade-names when such use has the potential for deceit or confusion. See *id*; see also *M.M Newcomer Co v Newcomer's New Store*, 142 Tenn. 108, 217 S.W. 822 (1919).

While Tenn. Code Ann. §§65-4-104, which is cited in support of the proposed rule, confers "general supervisory and regulatory power, jurisdiction and control" in the Authority over utilities, the statute does not specifically authorize the Authority to regulate the use of business names when the Secretary of State, and, apparently, other agencies, possess such authority.² Moreover, although Tenn. Code Ann. §65-2-102 (2) generally authorizes rulemaking, it does not allow the Authority to "extend its power or jurisdiction to matters not provided for in those laws."

The Authority, however, *does* possess the capacity under other provisions of law to regulate utility name changes under certain circumstances. For example, the anti-

² It also appears that the Consumer Protection Division of the Attorney General's office may have authority under the Tennessee Consumer Protection Act of 1977 ("TCPA"), Tenn. Code Ann. 47-18-104 (2) & (3), to seek administrative and judicial redress for unfair or deceptive acts or practices, in addition to private rights of action under the TCPA and other law.

“slamming” statute, Tenn. Code Ann. §64-4-125 – which, although not cited in support of the proposed rule, appears at least in part to motivate its drafting³ - forbids a telecommunications service provider from transferring service of a customer when the utility has reason to know the customer has not authorized the change. A utility using a deceptive or confusing name to assist in slamming activity would appear to violate the statute. Accordingly, Rule 1220-4-2-.58(3), enacted under the authority of §64-4-125, forbids telecommunications service providers from “(m)isleading, deceptive, or unfair marketing acts or practices” to obtain a subscriber’s consent to charges on his or her telephone bill

Similarly, Tenn Code Ann. §65-4-201 (c) states that a utility seeking certification from the Authority shall adhere to the latter’s “policies, rules and orders.” Among those are the requirement of Rule 1220-4-8-.04(1)(h), enacted under the pro-competitive policy articulated by §64-4-125, that a utility applying for certification provide “(s)uch other information as the Commission (sic) may require.” Consequently, the Authority, if it believes an applicant seeking certification as a telecommunications service provider could exploit a deceptive or confusing name to mislead end users, can exercise its discretion regarding the suitability of the candidate to provide service in Tennessee. Also, with regard to tariffs, Tenn Code Ann. §65-5-201 (a) confers power on the Authority to “determine [whether] any existing schedule [is] unjust, unreasonable [or] insufficient.” Hence name changes, when appropriate, should be

³ See proposed Rule 1220-4-1- 08(2)(c), which is discussed in footnote 4 below

reflected in the tariffs filed by utilities. See also Tenn. Code Ann. §§65-5-202, 65-5-204, 65-5-210 (c). Given these considerations, the proposed rule appears unnecessary⁴

Consequently, MCI recommends the following changes to the proposed rule (deletions in brackets and additions in bold):

(1) Any public utility certificated to provide services in the state of Tennessee pursuant to Tenn. Code Ann. § 65-4-201 shall **notify** [petition for approval of] the Authority **upon** [before] doing either of the following:

(a) Changing the registered business name of the certificated public utility, or

(b) Adopting an assumed business name under which the public utility will provide services to its Tennessee customers.

(2) **The notification** [A petition for approval of either action] referenced in subsection (1) above shall include the following:

(a) For public utilities operating as either a corporation, limited liability company, or limited partnership, verification that the certification public utility has registered the changed or assumed business name with the Office of the Tennessee Secretary of State in compliance with the requirements of Tenn. Code Ann. §§ 48-14-103, 48-54-103, 48-207-103, or 61-2-103; **and**

(b) [For public utilities providing telecommunications services in the state of Tennessee, verification that the changed or assumed corporate name has been recorded in the public utility's surety bond or letter of credit obtained pursuant to the Tenn. Code Ann. § 65-4-125; and

(c)] If the certificated public utility is currently serving end user customers in the state of Tennessee, a **copy of the** [proposed] notice [for the Authority's approval] to be sent to the utility's Tennessee customers for

⁴ The proposed rule, in subsection (2)(c), requires utilities to send their customers letters, which have been approved by the Authority, that are required under Rule 1220-4-02- 56(2). That rule, however, is an anti-slammng requirement pertaining to *transfers* of service. The language of the letters required under the rule pertains to transfers of service. The situation contemplated by the proposed rule pertains to changes of name. Thus the rule cited is inapposite. Moreover, if it appears that the name change or the notice itself has the purpose of deceiving customers, then, as contended above, the Authority has the ability under the anti-slammng statute and existing rules to take appropriate action. There also appears to be no need, with regard to proposed section (2)(b), for a utility to change its surety bond or letter of credit, so long as the Authority is notified of the name change.

the purpose of informing these customers of the anticipated change in business name or adoption of an assumed business name[,consistent with the requirements of TRA Rule 1220-4-02-.56(2)].

[(3) At its own discretion, the Authority may waive any of the requirements of subsection (2) of this rule for good cause.]

In conclusion, MCI recognizes that utilities should notify the Authority and customers of name changes, and file new tariffs to indicate the changed names. If other issues are presented by the change in names, the Authority's existing powers and other laws will provide the necessary procedures and remedies for redress.

Respectfully submitted this 10th day of May, 2004.

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